

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NICHOLAS BART ELLIS,

No. C 07-5126 SBA (pr)

Plaintiff,

v.

A. NAVARRO, et al.,

Defendants.

**ORDER GRANTING MOTION FOR  
APPOINTMENT OF COUNSEL;  
REFERRING CASE TO FEDERAL  
PRO BONO PROJECT; APPOINTING  
COUNSEL; AND SETTING  
BRIEFING SCHEDULE**

Before the Court is Plaintiff's motion for appointment of counsel.

The appointment of counsel is a matter for the Court's discretion, to be granted only in exceptional circumstances. See Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984). Here, Plaintiff alleges that Defendants used excessive force against him in an incident on August 14, 2006, and that he suffered extensive injuries as a result of this incident. In an Order dated September 30, 2009, the Court found that Plaintiff stated a cognizable Eighth Amendment claim against Defendants Navarro, Juarez and Gardner, as well as cognizable First Amendment claim against Defendant Wilber for attempting to stifle Plaintiff's administrative grievances related to the August 14, 2006 incident. The circumstances surrounding the allegations relating to the amount of force used by Defendants Navarro, Juarez and Gardner, as well as the actions of Defendant Wilber in violating Plaintiff's right to access to the courts, are critical to determining the viability of Plaintiff's claims. Moreover, Plaintiff's evidence as to the excessive force claim will largely consist of his version of the events. Now pending before this Court is Defendants' dispositive motion, which was filed on March 19, 2010. At this time, the Court finds that exceptional circumstances exist which warrant the appointment of counsel to assist Plaintiff. Accordingly, Plaintiff's motion for appointment of counsel (docket no. 24) is GRANTED.

1 The Court having determined that it would be beneficial to have counsel assist Plaintiff in  
2 this matter and having located volunteer counsel willing to be appointed to represent Plaintiff,

3 IT IS HEREBY ORDERED that Plaintiff's claims against Defendants Navarro, Juarez,  
4 Gardner and Wilber shall be referred to the Court's Federal Pro Bono Project, and that Tom Loran,  
5 Esq. (SBN 95255) and Marc Axelbaum, Esq. (SBN 209855) of Pillsbury Winthrop Shaw Pittman  
6 LLP are appointed as counsel for Plaintiff in this matter pursuant to 28 U.S.C. § 1915(e)(1) and the  
7 Court's Federal Pro Bono Project guidelines.

8 The Clerk of the Court shall send a copy of this Order to Mr. Loran and Mr. Axelbaum at  
9 Pillsbury Winthrop Shaw Pittman LLP, Post Office Box 7880, San Francisco, California  
10 94120-7880. The Clerk of the Court shall also send a copy of this Order to Plaintiff, and to  
11 Defendants' counsel.

12 Because Mr. Loran and Mr. Axelbaum have just been appointed to represent Plaintiff in this  
13 action, the Court GRANTS Plaintiff an extension of time to file an opposition to Defendants'  
14 dispositive motion. The time in which Plaintiff may file an opposition will be extended up to and  
15 including **June 18, 2010**.

16 If Defendants wish to file a reply brief, they shall do so no later than **fifteen (15) days** after  
17 the date Plaintiff's opposition is filed.

18 Any further requests for extensions of time are not favored, though reasonable extensions  
19 will be granted. However, the party making a motion for an extension of time is not relieved from  
20 his or her duty to comply with the deadlines set by the Court merely by having made a motion for an  
21 extension of time. The party making the motion must still meet the deadlines set by the Court until  
22 an order addressing the motion for an extension of time is issued. Any motion for an extension of  
23 time must be filed no later than **ten (10) days** prior to the deadline sought to be extended.

24 This Order terminates Docket no. 24.

25 IT IS SO ORDERED.

26 DATED: 3/23/10

27   
28 SAUNDRA BROWN ARMSTRONG  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 NICHOLAS BART ELLIS,

5 Plaintiff,

6 v.

7 SERGEANT A. NAVARRO et al,

8 Defendant.  
\_\_\_\_\_ /

Case Number: CV07-05126 SBA

**CERTIFICATE OF SERVICE**

9  
10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
Court, Northern District of California.

11 That on March 24, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
located in the Clerk's office.

14  
15 MR. LORAN  
16 MR. AXELBAUM  
17 PILLSBURY WINTHROP SHAW PITTMAN LLP  
P.O. BOX 7880  
SAN FRANCISCO CA 94120-7880

18 Nicholas Bart Ellis K-16024  
19 Pelcian Bay State Prison  
20 P.O. Box 7500  
Crescent City, CA 95532

21 Dated: March 24, 2010

22 Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk